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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 HELEN D. RIDENOUR,) NO. CV 12-9045-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 CAROLYN W. COLVIN, ACTING)
18 COMMISSIONER OF SOCIAL SECURITY,¹)
19)
20 Defendant.)
21 _____)

22 PROCEEDINGS
23
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25 Plaintiff filed a Complaint on October 25, 2012, seeking review
26 of the Commissioner's denial of benefits. The parties filed a consent
27 to proceed before a United States Magistrate Judge on December 5,
28 2012.

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31 ¹ Carolyn W. Colvin, who became Acting Commissioner of
32 Social Security as of February 14, 2013, is hereby substituted as
33 Defendant in this matter. See Fed. R. Civ. P. 25(d)(1); 42
34 U.S.C. § 405(g).

1 Plaintiff filed a motion for summary judgment on May 28, 2013.²
2 Defendant filed a cross-motion for summary judgment on June 26, 2013.
3 The Court has taken both motions under submission without oral
4 argument. See L.R. 7-15; "Order," filed October 26, 2012.

5
6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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8 Plaintiff asserted disability since October 6, 2003, based on
9 alleged physical and mental impairments (Administrative Record
10 ("A.R.") 1-1992). Following a previous remand from this Court (A.R.
11 976-82), the Administrative Law Judge ("ALJ") examined the record and
12 heard testimony from Plaintiff and a vocational expert (A.R. 960-74,
13 1951-92).

14
15 The ALJ found Plaintiff has the severe impairments of "cerebral
16 palsy with cognitive delay; diabetes mellitus; status post spinal
17 fusion; and anxiety disorder" (A.R. 965). The ALJ determined that
18 Plaintiff retains the residual functional capacity to lift and carry
19 ten pounds occasionally and five to ten pounds frequently, to stand
20 and walk six hours in an eight hour workday, to sit six hours in an
21 eight hour workday and to perform jobs involving simple repetitive
22 tasks, with certain further limitations (A.R. 968). Relying on the
23 testimony of the vocational expert, the ALJ found that Plaintiff could
24 perform particular jobs existing in significant numbers in the
25 national economy (A.R. 973, 1990-91). The ALJ deemed not credible
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27 ² Plaintiff's motion violates paragraph VI of this
28 Court's "Order," filed October 26, 2012. Counsel for Plaintiff
shall heed the Court's orders in the future.

1 Plaintiff's testimony and statements regarding the severity of her
2 alleged symptoms, stating several reasons for this credibility
3 assessment (A.R. 968-71). The Appeals Council denied review (A.R.
4 892-94).

6 **PLAINTIFF'S CONTENTION**

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8 Plaintiff contends that the ALJ erred in finding Plaintiff's
9 testimony not entirely credible.

11 **STANDARD OF REVIEW**

12
13 Under 42 U.S.C. section 405(g), this Court reviews the
14 Administration's decision to determine if: (1) the Administration's
15 findings are supported by substantial evidence; and (2) the
16 Administration used correct legal standards. See Carmickle v.
17 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
18 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
19 relevant evidence as a reasonable mind might accept as adequate to
20 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
21 (1971) (citation and quotations omitted); see also Widmark v.
22 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

23
24 This Court "may not affirm [the Administration's] decision simply
25 by isolating a specific quantum of supporting evidence, but must also
26 consider evidence that detracts from [the Administration's]
27 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)
28 (citation and quotations omitted); see Lingenfelter v. Astrue, 504

1 F.3d 1028 (9th Cir. 2007) (same). However, the Court cannot disturb
 2 findings supported by substantial evidence, even though there may
 3 exist other evidence supporting Plaintiff's claim. See Torske v.
 4 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.
 5 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

7 DISCUSSION

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 9 After consideration of the record as a whole, Defendant's motion
 10 is granted and Plaintiff's motion is denied. The Administration's
 11 findings are supported by substantial evidence and are free from
 12 material³ legal error. Plaintiff's contrary contention is unavailing.

13
 14 An ALJ's assessment of a claimant's credibility is entitled to
 15 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
 16 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The
 17 discounting of a claimant's testimony regarding subjective symptoms
 18 must be supported by specific, cogent findings. See Lester v. Chater,
 19 81 F.3d 821, 834 (9th Cir. 1995); see also Berry v. Astrue, 622 F.3d
 20 1228, 1234 (9th Cir. 2010) (reaffirming same); but see Smolen v.
 21 Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996) (indicating that ALJ
 22 must offer "specific, clear and convincing" reasons to reject a

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 27 ³ The harmless error rule applies to the review of
 28 administrative decisions regarding disability. See McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
 400 F.3d 676, 679 (9th Cir. 2005).

1 claimant's testimony where there is no evidence of malingering).⁴
2 Contrary to Plaintiff's arguments, the ALJ stated sufficient reasons
3 for deeming Plaintiff's testimony less than fully credible.

4
5 The ALJ properly reasoned that the objective medical evidence did
6 not support a level of physical or mental symptomatology that would
7 prevent Plaintiff from working (A.R. 969-71). Although a claimant's
8 credibility "cannot be rejected on the sole ground that it is not
9 fully corroborated by objective medical evidence, the medical evidence
10 is still a relevant factor. . . ." Rollins v. Massanari, 261 F.3d
11 853, 857 (9th Cir. 2001). Here, the medical evidence suggests
12 Plaintiff's mental and physical problems have not been, and are not
13 now, as profound as she has claimed (A.R. 354-59, 362-67, 561, 1532-
14 36, 1735, 1831-32, 1890-91).

15
16 The ALJ also properly cited inconsistencies in Plaintiff's
17 testimony and statements regarding the extent of her alleged
18 limitations (A.R. 969-70). For example, Plaintiff testified both that
19 she "can't sit for more than 30 minutes" and that she can and does
20 drive a car for 40 minutes at a time (A.R. 1964, 1971). Moreover,
21 Plaintiff admitted in testimony she gave in March of 2007 that her
22

23 ⁴ In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Chaudhry v. Astrue,
26 688 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue,
27 674 F.3d 1104, 1112 (9th Cir. 2012); Taylor v. Commissioner, 659
28 F.3d 1228, 1234 (9th Cir. 2011); see also Ballard v. Apfel, 2000
WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting
earlier cases). In the present case, the ALJ's findings are
sufficient under either standard, so the distinction between the
two standards (if any) is academic.

1 May, 2006 back surgery⁵ "made the pain a lot easier" and permitted her
2 to "sit without limitation" (A.R. 842-43) (emphasis added). For
3 further example, Plaintiff both reported that her condition causes her
4 difficulty in grooming and that she has no such difficulty (A.R. 1040-
5 41, 1049, 1060; see also A.R. 113-14 (report from Plaintiff's mother
6 indicating Plaintiff has no problem with Plaintiff's personal hygiene
7 and personal care)). In evaluating a claimant's credibility, an ALJ
8 properly may consider inconsistencies in the claimant's testimony and
9 statements. See Molina v. Astrue, 674 F.3d at 1112. Similarly, a
10 claimant's demonstrated tendency to exaggerate can furnish an adequate
11 reason for rejecting the claimant's credibility. See, e.g.,
12 Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2001); Bickell v.
13 Astrue, 343 Fed. App'x 275, 277-78 (9th Cir. 2009). At a minimum, it
14 would be reasonable to infer that the inconsistencies in Plaintiff's
15 testimony and statements betray a tendency to exaggerate.

16
17 The ALJ also properly cited as a factor undercutting Plaintiff's
18 credibility the fact that she has had no follow-up treatment for her
19 allegedly disabling back pain other than physical therapy (A.R. 969-
20 70, see A.R. 1969). A conservative course of treatment may discredit
21 a claimant's allegations of disabling symptoms. See Meanel v. Apfel,
22 172 F.3d 1111, 1114 (9th Cir. 1999) (failure to request "any serious

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24 ⁵ In previously remanding this case, the Court indicated
25 that the evidence in the then-existing record did not rule out
26 the possibility that back pain may have disabled Plaintiff from
27 July 3, 2004, through sometime after her May, 2006 surgery (A.R.
28 981). In the ensuing administrative decision, however, the ALJ
considered and rejected the possibility of a closed period of
disability (A.R. 969-70). The ALJ properly found on the present
record that a disabling level of pain never existed for the
requisite duration of 12 continuous months (id.).

1 medical treatment for [claimant's] supposedly excruciating pain" was
2 adequate reason to reject claimant's pain testimony); Johnson v.
3 Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative treatment
4 can suggest a lower level of both pain and functional limitation,
5 justifying adverse credibility determination); see also Tommasetti v.
6 Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (characterizing physical
7 therapy as conservative treatment).

8
9 The ALJ also noted some observations in Plaintiff's treatment
10 record which suggest that Plaintiff's pre-surgery pain had not been as
11 significant as she claimed (A.R. 969; see A.R. 567). A disparity
12 between a claimant's representations and the observations of examiners
13 may properly impeach a claimant's credibility. See, e.g., Copeland v.
14 Bowen, 861 F.2d 536, 541 (9th Cir. 1988).

15
16 Finally, the ALJ cited certain inconsistencies between
17 Plaintiff's claimed limitations and her admitted activities (A.R.
18 970). As the ALJ pointed out, Plaintiff has written letters
19 reflecting a range of grammar and coherence inconsistent with her
20 alleged cognitive limitations (A.R. 970; see A.R. 618-19, 622, 677).
21 The ALJ also pointed out that Plaintiff drives a car on her own, which
22 further suggests she has the mental capacity to perform simple,
23 repetitive tasks (A.R. 970; see A.R. 801, 1981-82). Inconsistencies
24 between a claimant's testimony and her actions can support the
25 rejection of the claimant's credibility. See, e.g., Molina v. Astrue,
26 674 F.3d at 1112; Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.

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2002); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999).⁶

Thus, the ALJ stated sufficient reasons to allow this Court to conclude that the ALJ discounted Plaintiff's credibility on permissible grounds. See Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004). The Court therefore defers to the ALJ's credibility determination. See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will defer to ALJ's credibility determination when the proper process is used and proper reasons for the decision are provided); accord Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).

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⁶ The ALJ also discerned inconsistencies between Plaintiff's claimed physical limitations and the extent of her physical activities. In the previous remand, this Court found similar inconsistencies insufficient to support the ALJ's prior credibility determination (A.R. 979-80). The Court then acknowledged the difficulty in reconciling particular Ninth Circuit decisions upholding and striking down an ALJ's rejection of a claimant's credibility in reliance on the claimant's daily activities. Compare Burch v. Barnhart, 400 F.3d at 680 with Vertigan v. Halter, 260 F.3d 1044, 1049-50 (9th Cir. 2001) and Gallant v. Heckler, 753 F.2d 1450, 1453-55 (9th Cir. 1984). Assuming arguendo that the ALJ's partial reliance on this consideration was again improper, the ALJ's present credibility determination nevertheless would stand. Under Carmickle v. Commissioner, 533 F.3d at 1163, the infirmity of one or two supporting reasons for an ALJ's credibility determination does not require overturning the determination if independently valid supporting reasons remain. Independently valid supporting reasons remain in the present case.

1 **CONCLUSION**

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3 For all of the foregoing reasons, Plaintiff's motion for summary

4 judgment is denied and Defendant's motion for summary judgment is

5 granted.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: July 3, 2013.

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11 _____/S/_____
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE

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